

## REGION 6 EXECUTIVE SUMMARY

TOPIC: Texas Regional Haze Status and Litigation

DATE: August 7, 2018

CONTACT: Michael Feldman x9793

### BACKGROUND:

- Texas Regional Haze SIP: Regional Haze SIPs were due from states by December 17, 2007. Texas submitted their regional haze SIP on March 31, 2009. This SIP included a reliance on Texas' participation in the Clean Air Interstate Rule (CAIR) as an alternative to Best Available Retrofit Technology (BART) for sulfur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) emission from Electric Generating Units (EGUs).
- Limited Disapproval: However, because CAIR was remanded by the D. C. Circuit, EPA issued a limited disapproval of all state SIPs that relied on CAIR in 2012.
- Texas Regional Haze Rule Requirements other than EGU BART (Reasonable Progress Federal Implementation Plan [FIP]): EPA acted on all non-EGU BART aspects of the 2009 Regional Haze SIP in January 2016 with a partial approval, partial disapproval, and an accompanying FIP that would impose source-specific SO<sub>2</sub> controls on certain Texas EGUs (81 FR 295) under the reasonable progress requirements. Texas and other stakeholders challenged the action, obtaining a July 2016 judicial stay from the Fifth Circuit Court of Appeals. In December 2016, EPA requested and was granted a voluntary remand of the entire rule without vacatur.
- Proposed Rule for EGU BART in Texas: On January 4, 2017, we published a proposed rule. The notice proposed to: 1) partially disapprove a portion of the Texas SIP pertaining to particulate matter (PM) BART for EGUs; 2) address BART for EGUs through a FIP including source-specific BART on 29 units at EGUs for PM and SO<sub>2</sub>; 3) a finding that NO<sub>x</sub> BART is met by participation in the updated Cross-State Air Pollution Rule (CSAPR), as updated; and 4) reconsider and disapprove portions of several SIP revisions submitted to satisfy interstate transport for six NAAQS; and, determine that BART, as proposed in the notice, would meet interstate visibility transport requirements, necessitating no further FIP measures.
- Final EGU BART Rule: Subject to a Consent Decree deadline<sup>1</sup>, EPA finalized the Texas Regional Haze BART and Visibility Transport FIP (82 FR 48324, October 17, 2017). Prior to this final action, EPA and the State of Texas signed a Memorandum of Agreement (MOA) where Texas agreed to submit a SIP to EPA by October 31, 2018 to address the BART requirements. In our October 17, 2017 final action we: 1) finalized an alternative to BART that consists of an intrastate trading program addressing the SO<sub>2</sub> emissions from certain EGUs, with the first year of compliance being 2019; 2) finalized our proposed determination that Texas' participation in the CSAPR trading program for ozone-season NO<sub>x</sub> qualifies as an alternative to BART; 3) approved Texas' determination that its EGUs are not subject to BART for PM; and 4) disapproved portions of several SIP revisions submitted to satisfy the interstate visibility transport for

<sup>1</sup> This action is subject to two Consent Decrees (one for BART and one for Visibility Transport); both are in District Courts for the District of Columbia, and both had the same final action deadline.

six NAAQS; and, found that the BART alternatives to address SO<sub>2</sub> and NO<sub>x</sub> BART at Texas' EGUs meet the interstate visibility transport requirements for these NAAQS.

**CURRENT STATUS:**

- On December 15, 2017, the National Parks Conservation Association (NPCA), Sierra Club, and Environmental Defense Fund (EDF) filed a petition for review with the Fifth Circuit.
- On December 15, 2017, NPCA, Sierra Club, and EDF filed an administrative petition for reconsideration under CAA section 307(d)(7)(B) with EPA, asking the EPA Administrator to reconsider nine aspects of the final action.
- Litigation in Fifth Circuit and DC district are currently stayed pending the resolution of plaintiffs' petition for reconsideration.
- As stated in our letter in response to that petition dated April 30, 2018, we believe certain specific aspects of the federal plan can benefit from further public comment.
- As such, we are developing a proposed rule to solicit comments on certain aspects of that October 2017 final action.
- In a July 2 status report to the DC district court, EPA stated that we would completed our proposed rulemaking no later than August 17, 2018
- The proposed rule will be signed no later than August 17, 2018.
- On September 26, 2018, EPA will be holding a public hearing in Austin to accept oral comments into the record on our proposed rule to solicit comments of certain aspects of our October 2017 final action.